

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





DOCKET NO.

**76-1237**

IN THE

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

*B*  
*175*

UNITED STATES OF AMERICA

Appellee

v.

JOSEPH FALCONE and  
JOSEPH CURRERI

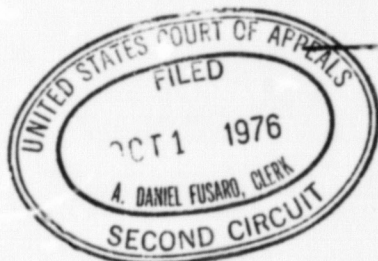
Appellants

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Appeal from the United States District  
Court for the District of Vermont

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APPENDIX FOR THE UNITED STATES



GEORGE W.F. COOK  
United States Attorney  
District of Vermont

JEROME F. O'NEILL  
Assistant U.S. Attorney

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SCHEDULE 11A

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA )  
 ) 18 U.S.C. Secs. 152,2,371  
vs. )  
 )  
JOSEPH FALCONE ) Criminal No. 7537  
JOSEPH CURRERI )

COUNT 1

The Grand Jury charges:

1. On the 13th day of December, 1973, an involuntary Petition for Bankruptcy was filed in the United States District Court for the District of Vermont asking that Alburg Creamery, Inc., a corporation organized and existing under the laws of the State of Vermont, with its place of business at Alburg, Vermont, be adjudicated a bankrupt.

2. In pursuance of said Petition the said Alburg Creamery, Inc. was, on the 22nd day of January, 1974, adjudicated a bankrupt by the Honorable Charles Marro, Bankruptcy Judge of the aforesaid Court.

3. Thereafter, on the 14th day of February, 1975, Ronald Schmucker was appointed trustee of the estate of the said bankrupt.

4. During all of the times hereinafter mentioned, JOSEPH FALCONE, a defendant herein, was the Vice-President of the said bankrupt.

Filed Nov. 12, 1975  
George F. Faloutouro  
Deputy Clerk



5. From on or about the 31st day of January, 1974, and continuously thereafter until the return of this Indictment, in the District of Vermont, JOSEPH FALCONE and JOSEPH CURRERI, the defendants, knowingly and fraudulently did conceal from Ronald Schmucker, and from creditors in the said bankruptcy proceeding, property valued at in excess of \$100,000 belonging to the estate of the said bankrupt, said property consisting of accounts receivable from Falcone Dairy Products, Inc.

(In violation of Sections 152, 2, of Title 18,  
United States Code)

COUNT 2

The Grand Jury further charges:

1. Paragraphs 1 through 4 of Count 1 are hereby incorporated by reference.

2. On or about the 14th day of February, 1974, in the District of Vermont, JOSEPH FALCONE, the defendant, knowingly and fraudulently did make a false oath and account as to a material matter, in and in relation to, the aforesaid bankruptcy proceeding, in that he filed and caused to be filed with the Bankruptcy Judge of the United States District Court for the District of Vermont, schedules of debts and assets of the said bankrupt, subscribed and sworn to by the said JOSEPH FALCONE in a document known as a Statement of Affairs, wherein he did make solemn oath that the answers contained therein were true and complete to the best of his knowledge, information and belief, but wherein he did knowingly and fraudulently fail to disclose that among the assets of the said bankrupt were in excess of \$100,000 in accounts receivable, and that JOSEPH CURRERI, the defendant, did aid, abet, counsel, command, induce and procure the commission of this offense.

(In violation of Sections 152, 2, of Title 18,  
United States Code)



COUNT 3

The Grand Jury further charges:

1. Paragraphs 1 through 4 of Count 1 are hereby incorporated by reference.

2. On or about the 31st day of January, 1974, in the District of Vermont, JOSEPH FALCONE, the defendant, an officer of the Alburg Creamery, Inc., the bankrupt, and in contemplation of a bankruptcy proceeding by and against the said Alburg Creamery, Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said Alburg Creamery, Inc., that is accounts receivable valued at in excess of \$100,000, and that JOSEPH CURRERI, the defendant, did aid, abet, counsel, command, induce and procure the commission of this offense.

(In violation of Sections 152, 2, of Title 18,  
United States Code)

Schedule D-2.

COUNT 4

The Grand Jury further charges:

1. Paragraphs 1 through 4 of Count 1 are hereby incorporated by reference.

2. On or about the 31st day of January, 1974, JOSEPH FALCONE and JOSEPH CURRERRI, the defendants, did knowingly and fraudulently aid, abet, counsel, command, induce and procure and did wilfully cause the falsification and making of a false entry in a document affecting and relating to the property and affairs of the bankrupt, to wit, the General Journal of Falcone Dairy, Inc.

(In violation of Sections 152, 2, of Title 18,  
United States Code)



COUNT 5

The Grand Jury further charges:

From on or about December 1, 1970, up to and including the date of this Indictment, in the District of Vermont and elsewhere, JOSEPH FALCONE and JOSEPH CURRERI, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together with each other and other persons to the Grand Jury unknown to commit offenses against the United States, to wit, to violate Section 152 of Title 18, of the United States Code.

It was part of the conspiracy that the conspirators would knowingly and fraudulently conceal from the trustee in bankruptcy and Bankruptcy Judge in the matter of the bankruptcy of Alburg Creamery, Inc. and from the creditors in this bankruptcy proceeding, property belonging to the estate of the bankrupt.

It was a further part of said conspiracy that defendant, JOSEPH FALCONE, would knowingly and fraudulently make a false oath and account in relation to the bankruptcy proceedings with respect to Alburg Creamery, Inc.

It was a further part of the conspiracy that JOSEPH FALCONE, as an officer of Falcone Dairy Products, Inc., and vice-president of Alburg Creamery, Inc., and JOSEPH CURRERI, an employee of Falcone Dairy Products, Inc., in contemplation of a bankruptcy proceeding against Alburg Creamery, Inc., and with intent to defeat the bankruptcy law would knowingly and fraudulently transfer and conceal and cause to be transferred and concealed property of the bankrupt.

It was a further part of the conspiracy that the defendants, JOSEPH FALCONE and JOSEPH CURRERI, after the filing of a bankruptcy proceeding against Alburg Creamery, Inc., would knowingly and fraudulently make and cause to be made a false entry in the records of Falcone Dairy Products, Inc., which entry would affect and would relate to the property and affairs of the bankrupt, Alburg Creamery, Inc.

In furtherance of said conspiracy and to affect the objects thereof, the following overt acts were committed in the District of Vermont and elsewhere:

1. On or about the 31st day of January, 1974, JOSEPH FALCONE had a conversation with Joseph Wool in Burlington, Vermont.
2. On or about the 13th day of February, 1974, JOSEPH FALCONE signed a statement of affairs in connection with the bankruptcy proceedings with respect to Alburg Creamery, Inc.
3. On or about the 14th day of February, 1974, JOSEPH FALCONE appeared at proceedings with respect to Alburg Creamery, Inc., before the Bankruptcy Judge in Burlington, Vermont.
4. In February, 1974, JOSEPH FALCONE spoke with Mario Accardi.
5. In February, 1974, JOSEPH CURRERI spoke with Mario Accardi.

(In violation of Section 371 of Title 18 United States Code)



A TRUE BILL

*Chas. W. ...*  
Foreman

GEORGE W.F. COOK  
United States Attorney

By: *Jerome F. O'Neill*  
Jerome F. O'Neill  
Assistant U.S. Attorney

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NAME

ADDRESS

Terms

Rating

Credit Limit

DATE 19	ITEMS	DEBITS	FOLO	DATE 19	ITEMS	CREDITS
Dec 1	Loans Payable - Netire Life			16	7478.91	
	Cash Surrender Value - Life Insurance			8		7478.91
	Adjust					
1	Returned Earnings - (Life Insurance)			37	4513.25	
	Cash Surrender Value - Life Insurance			8		4513.25
	Transfer					
11	Notes Payable - Bk			12	121.00	
	Interest Income			70		121.00
Jan 31	Notes Pay - Bk			12	121.00	
	Interest Income			70		121.00
31	Accounts Payable - ALBING			30	210711.05	
	Purchases - ALBING			40		210711.05
	TO ADJUST FOR CREDITS TO CUSTOMERS DUE TO					
	DEFECTIVE CHEESE FROM JULY 1971 thru Dec 1971					
	AS PER LIST RETURNED BY MARKHAM					
31	Sales			39	10000.00	
	Notes Receivable - Future Income			34		10000.00
	Relative Share - all income					
Feb 14	Loans Payable - Lipo Cheese			11	16626.69	
	Transfer			11		16626.69



In the District Court of the United States for the

District of Vermont

In the matter of

ALBURG CREAMERY, INC.

Involuntary Bankrupt

See footnote



In Bankruptcy

No. ....

PETITION

To the Honorable Judges of the District Court of the United States

for the District of Vermont

THE PETITIONER INVOLUNTARY PETITION OF ALBURG CREAMERY, INC.

a corporation engaged in the business of engaging in wholesale and retail manufacture and sale of cheese and kindred products which corporation has not been known by any name or trade name for the past six years, other than as set forth in the above caption,

RESPECTFULLY REPRESENTS:

1. Your petitioner is a <sup>\*corporation organized and existing under the laws</sup> of the State of Vermont and has had its principal office and its principal place of business at Alburg, County of Grand Isle, State of Vermont within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all its property for the benefit of its creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to Bankruptcy; and that its Board of Directors has duly authorized such acts on its part in the statements herein made in its behalf.

3. The schedule hereto annexed, marked Schedule A, and verified by the oath of the undersigned officer of your petitioner, contains a full and true statement of all its debts, and so far as it is possible to ascertain, the names and places of residence of its creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by the oath of the undersigned officer of your petitioner, contains an accurate inventory of all its property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

WHEREFORE, your petitioner prays that it may be adjudged by the court to be a bankrupt within the purview of said Act.

ALBURG CREAMERY, INC.

Petitioner

By

Vice-President

of said corporation

(SEAL)

*Joseph S. Wolfe*  
Attorney

STATE OF Vermont

COUNTY OF Chittenden

ss.:

JOSEPH FALCONE  
Vice-President

being duly sworn deposes and says that he is the

of ALBURG CREAMERY, INC.

the petitioner named in the foregoing petition, and does hereby make solemn oath that the statements contained therein are true, according to the best of his knowledge, information and belief; that the reason why this verification is made by deponent and not by the petitioner herein, is that said petitioner is a corporation, and that deponent is the officer of said corporation duly authorized by its Board of Directors to execute and verify said petition on its behalf.

Subscribed and sworn to before me this

13th day of February

19 74

Notary Public

(Official Character)

*Joseph S. Wolfe*  
Filed February 14, 1974  
Clifford H. Haines  
Bankruptcy Judge

NOTE: Set forth in caption all assumed, trade and any other names or designations by or under which bankrupt or debtor has been known or has conducted any business within preceding 6 years.

N. B.—Oaths to the above petition, and the schedules thereto annexed, may be administered by officers authorized to administer oaths in proceedings before Courts of the United States, or under the laws of the State where the same are to be taken; and diplomatic or consular officers of the United States in any foreign country.

\*Moneyed, Business or Commercial.

## SCHEDULE A.—STATEMENT OF ALL DEBTS OF DEBTOR

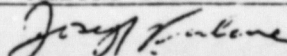
## Schedule A-1

Statement of all creditors to whom priority is secured by the act.

Claims which have priority.	Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated.)	When and where incurred or contracted.	Whether claim is contingent, unliquidated or disputed.	Nature and consideration of the debt, and whether incurred or contracted as partner or joint contractor and, if so, with whom.	Amount due or claimed.
<p>a.</p> <p>Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the debtor, to an amount not exceeding \$600 each, earned within three months before filing the petition.</p>			NONE				\$
<p>b.</p> <p>Taxes due and owing to—</p> <p>(1) The United States.</p> <p>(2) The State of Vermont</p> <p>(3) The county, district, or municipality of</p> <p>State of</p>			Undetermined	Undetermined			
<p>c.</p> <p>(1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority.</p> <p>(2) Rent owing to a landlord who is entitled to priority by the laws of the State of</p> <p>accrued within three months before filing the petition, for actual use and occupancy.</p>							
Total.....							

ALBURG CREAMERY

Petitioner



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**SCHEDULE A.—STATEMENT OF ALL DEBTS OF DEBTOR (Continued)**  
**Schedule A-2.**

**Creditors holding securities**

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Act of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.)

Reference to edge of voucher.	Names of creditors.	Residences (if un- known, that fact must be stated.)	Description of securities	When and where debts were contract- ed, and nature and consideration thereof.	Whether claim is contingent, unliqui- dated or disputed.	Value of securities.	Amount due or claimed.
5	American Pioneer Equipment Co. Brooklyn, N.Y. Cheese Cooker Purchased about February, 1973 either under Condition Sale or Mortgage Purchase price about \$12,000 -balance approximately \$10,000 to \$11,000					\$	\$
Total							

ALBURG CREAMERY, INC.

BY:

*Joseph J. ...*

Petitioner

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**Creditors whose claims are unsecured.**

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Albany Creamery  
of Payette

ALBURG CREAMERY, INC.

By:

## Fertilizers

*Josephine*, Vice President

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**SCHEDULE A.—STATEMENT OF ALL DEBTS OF DEBTOR (Continued)**  
Schedule A-4

*Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers.*

(N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, acceptors, or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.)

particulars shall be stated as to notes or bills on which the debtor is indebted.						
Refer- ence to ledger or voucher.	Names of holders as far as known.	Residences (if un- known, that fact must be stated.)	Place where con- tracted.	Whether claim is disputed.	Nature and consid- eration of liability, whether same was contracted as part- ner or joint con- tractor, or with any other person; and, if so, with whom.	Amount due or claimed.
						\$
Total.....						

Petitioner

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*Accommodation paper.*

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.)

Reference to ledger or voucher.	Names of holders.	Residences (if unknown, that fact must be stated.)	Names and residences of persons accommodated.	Place where contracted.	Whether claim is disputed.	Whether liability was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount due or claimed.
							<div data-bbox="1395 408 1407 425">\$</div>
Total.....							



OATH TO SCHEDULE A.

STATE OF VERMONT  
COUNTY OF CHITTENDEN } ss.:

I,

the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

ALBURG CREAMERY, INC.

BY: *Joseph S. Wool* Petitioner  
VICE-PRESIDENT

Subscribed and sworn to before me this

13th day of February

19 74

*Joseph S. Wool*  
JOSEPH S. WOOL, Notary Public

(Official Character)

This oath may be administered by officers authorized to administer oaths in proceedings before Courts of the United States or under the laws of the State where the same are to be taken; and diplomatic or consular officers of the United States in any foreign country.

Petitioner's attorney cannot act as notary.

# SCHEDULE B.—STATEMENT OF ALL PROPERTY OF DEBTOR

## Schedule B-1.

### Real Estate

Location and description of all real estate owned by debtor, or held by him, whether under deed, lease or contract.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value of debtor's interest.
Land and Premises in Alburg, Vermont	Approximately 6,300.00 to Chittenden Bank Alburg, Vermont		\$ under 6,300 0
Chittenden Bank held a first mortgage on			
The land, premises and equipment in the sum of approximately \$105,000.00. It was the named mortgagee under policy of Insurance with Lumberman's Insurance Co. It has received \$100,000.00 from said Insurance Co. under said policy.			
Total.....			\$6,300.

ALBURG CREAMERY, INC.

BY: *[Signature]*  
Vice-President

Petitioner



SCHEDULE B-2.

Personal property.

<sup>a</sup> Cash on hand.		None
<sup>b</sup> Negotiable and non-negotiable instruments, and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately.)		None
<sup>c</sup> Stock in trade, in business of cheese manufacturing at Alburg, Vermont of the value of		None
<sup>d</sup> Household goods and furniture, household stores, wearing apparel and ornaments of the person.		None
<sup>e</sup> Books, prints, and pictures.		None
<sup>f</sup> Horses, cows, sheep, and other animals (with number of each).		None
<sup>g</sup> Aut. mobiles and other vehicles.	Tank truck, straight body	Unknown
<sup>h</sup> Farming stock and implements of husbandry.		None
<sup>i</sup> Shipping, and shares in vessels.		None
<sup>j</sup> Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated.	Holding Tanks 2 Boilers 1 Boiler Room	Unknown
<sup>k</sup> Patents, copy-rights, and trade-marks.		None
<sup>l</sup> Goods or personal property of any other description, with the place where each is situated.		None
Total.....		None

By Joseph K. Kline ALBURG CREAMERY, INC.  
Vice President Petitioner  
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SCHEDULE B.—STATEMENT OF ALL PROPERTY OF DEBTOR (Continued)

Schedule B-3.

Choses in action.

<small>8</small> Debts due petitioner on open account.		\$
		NONE
	Total.....	

BY: ALBURG CREAMERY, INC. Petitioner  
Joseph F. [Signature]  
 VICE-PRESIDENT



# **SCHEDULE B-3 (Continued)**

*Choses in action.*

<p align="center"><b>b</b></p> <p>Policies of insurance.</p>	<p>Money due from LUMBERMENS MUTUAL CASUALTY COMPANY as a result of fire which destroyed ALBURG CREAMERY, INC.</p> <p align="right">approx.</p>	<p align="right">\$</p> <p align="right">160,000</p>	<p align="right">00</p>
<p align="center"><b>c</b></p> <p>Unliquidated claims of every nature, with their estimated value.</p>			
<p align="center"><b>d</b></p> <p>Deposits of money in banking institutions and elsewhere.</p>			
	<p align="right">Total approx.</p>	<p align="right">160,000</p>	<p align="right">00</p>

By ALBURG CREAMERY, INC.  
*[Signature]*  
 Vice President

Petitioner  
**20**

# **SCHEDULE B-4.**

**Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.**

(N. B.--A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.)

GENERAL INTEREST.	PARTICULAR DESCRIPTION	Estimated value of interest.
Interest in land.		NONE
Personal property.		NONE
Property in money, stock, shares, bonds, annuities, etc.		NONE
Rights and powers, legacies and bequests.		NONE
	Total.....	
PROPERTY HERETOFORE CONVEYED FOR BENEFIT OF CREDITORS. Portion of debtor's property conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor.		Amount realized as proceeds of property conveyed.  NONE
ATTORNEY'S FEES. Sum or sums paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.		NONE
	Total.....	

ALBURG CREAMERY, INC.

BY: *Joseph K. Korte*  
VICE-PRESIDENT

Petitioner  
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**SCHEDULE B.—STATEMENT OF ALL PROPERTY OF DEBTOR (Continued)**

**Schedule B-5.**

***Property claimed as exempt from the operation of the act of Congress relating to bankruptcy.***

(N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location description and present use.)

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption.	Valuation
	<div data-bbox="1373 372 1390 390">\$</div> <div data-bbox="1390 487 1453 508">None</div>
Property claimed to be exempt by State laws, with reference to the statute creating the exemption.	<div data-bbox="1390 1086 1453 1108">None</div>
Total.....	None

ALBORG CREAMERY, INC.  
 By *Joseph Hale* Debtor  
 Vice President  
 22

**SCHEDULE B-6.**

***Books, papers, deeds and writings relating to debtor's business and estate.***

The following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books	<p>Corporate Record Book</p> <p>Stock Transfer Ledger</p> <p>Stock Certificate Book</p>
Deeds	<p>Deed to Land and Premises in possession of Chittenden Bank It is recorded in Town Clerk's Office, Alburg, Vermont. There is the possibility of a lease from the State of Vermont granting the use of a siding which is adjoining the property owned by Alburg Creamery, Inc.</p>
Papers	<p>Employees Tax Records</p>

By Joseph M. Malone ALBURG CREAMERY, INC. Petitioner  
 Vice President 23



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OATH TO SCHEDULE B.

STATE OF VERMONT  
COUNTY OF CHITTENDEN

} ss.:

I,

the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

ALBURG CREAMERY, INC.

By

*Joseph S. Wool*  
Vice President

Petitioner

Subscribed and sworn to before me this

13th day of February

19 74

*Joseph S. Wool*  
JOSEPH S. WOOL, Notary Public

(Official Character)

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This oath may be administered by officers authorized to administer oaths in proceedings before Courts of the United States or under the laws of the State where the same are to be taken; and diplomatic or consular officers of the United States in any foreign country.

Petitioner's attorney cannot act as notary.

**SUMMARY OF DEBTS AND ASSETS**  
(From the statements of the debtor in Schedule A and B.)

Schedule A	1-a	Wages.	\$	NONE
Schedule A	1-b (1)	Taxes due United States.		Undetermined
Schedule A	1-b (2)	Taxes due States.		Undetermined
Schedule A	1-b (3)	Taxes due counties, districts and municipalities.		NONE
Schedule A	1-c (1)	Debts due any person, including the United States, having priority by laws of the United States.		
Schedule A	1-c (2)	Rent having priority.		
Schedule A	2	Secured claims.	10,000	00
Schedule A	3	Unsecured claims.	356,028	.23
Schedule A	4	Notes and bills which ought to be paid by other parties thereto.		
Schedule A	5	Accommodation paper.		
Schedule A, Total			\$366,028	.23
Schedule B	1	Real estate.	\$	6,300 00
Schedule B	2-a	Cash on hand.		
Schedule B	2-b	Negotiable and non-negotiable instruments and securities.		
Schedule B	2-c	Stock in trade.		
Schedule B	2-d	Household goods.		
Schedule B	2-e	Books, prints, and pictures.		
Schedule B	2-f	Horses, cows, and other animals.		
Schedule B	2-g	Automobiles and other vehicles.		
Schedule B	2-h	Farm stock and implements.		
Schedule B	2-i	Shipping and shares in vessels.		
Schedule B	2-j	Machinery, fixtures, and tools.		
Schedule B	2-k	Patents, copyrights, and trade-marks.		
Schedule B	2-l	Other personal property.		
Schedule B	3-a	Debts due on open accounts.		
Schedule B	3-b	Policies of insurance.	160,000	.00
Schedule B	3-c	Unliquidated claims.		
Schedule B	3-d	Deposits of money in banks and elsewhere.		
Schedule B	4	Property in reversion, remainder, expectancy or trust.		
Schedule B	5	Property claimed as exempt.		
Schedule B	6	Books, deeds and papers.		
Schedule B, Total			166,300	.00

BY: James H. Kline ALBURG CREAMERY, INC.  
VICE-PRESIDENT

Witness



STATEMENT OF AFFAIRS

(For Bankrupt or Debtor Engaged in Business.)

(NOTE:—Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.  
If the bankrupt or debtor is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be verified by a member of the partnership or by a duly authorized officer of the corporation.  
The term, "original petition," as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 358 of chapter XI, section 422 of chapter XII, or section 422 of chapter XIII.)

1. Nature, location and name of business.

- a. What business are you engaged in? manufacture and sale of cheese  
(If business operations have been terminated, give the date of such termination.)
- b. Where, and under what name, do you carry on such business?  
ALBURG CREAMERY, INC.
- c. When did you commence such business? October 9, 1970
- d. Where else, and under what other names, have you carried on business within six years immediately preceding the filing of the original petition herein? (Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)  
None

2. Books and records.

- a. By whom, or under whose supervision, have your books of account and records been kept during the two years immediately preceding the filing of the original petition herein? (Give names, addresses, and periods of time.)  
at office of ALBURG CREAMERY, INC.
- b. By whom have your books of account and records been audited during the two years immediately preceding the filing of the original petition herein? (Give names, addresses, and dates of audits.)  
Jurgs & Co., Burlington, Vermont
- c. In whose possession are your books of accounts and records? (Give names and addresses.)  
books of account - destroyed by fire  
corporate records are here in Court

3. Financial statements.

- a. Have you issued any financial statements within the two years immediately preceding the filing of the original petition herein? (Give dates, and the names and addresses of the persons to whom issued, including mercantile and trade agencies.)  
date unknown - Chittenden Trust Company, Alburg, Vermont

4. Inventories.

- a. When was the last inventory of your property taken? approximately June of 1973
- b. By whom, or under whose supervision, was this inventory taken? Warren Laramee
- c. What was the amount, in dollars, of the inventory? unknown - records destroyed by fire  
(State whether the inventory was taken at cost, market, or otherwise.)
- d. When was the next prior inventory of your property taken? taken monthly
- e. By whom, or under whose supervision, was this inventory taken? Warren Laramee - Leo Laramee
- f. What was the amount, in dollars, of the inventory? unknown - records destroyed by fire  
(State whether the inventory was taken at cost, market, or otherwise.)
- g. In whose possession are the records of the two inventories above referred to?  
(Give names and addresses.)  
possibly to Jurgs & Co.

5. Income other than from operation of business.

- a. What amount of income, other than from the operation of your business, have you received during each of the two years immediately preceding the filing of the original petition herein?  
(Give particulars, including each source, and the amount received therefrom.)  
None

6. Income tax returns.

- a. Where did you file your last federal and state income tax returns, and for what years?  
fiscal year October 1972 for both

7. Bank accounts and safe deposit boxes.

- a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein?  
(Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.)  
Chittenden Trust Company, Alburg, Vermont

- b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein?  
(Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.)  
None

8. Property held in trust.

- a. What property do you hold in trust for any other person?  
(Give name and address of each person, and a description of the property and the amount or value thereof.)  
None

# STATEMENT OF AFFAIRS—Continued

## 9. Prior bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein? (Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or composition, arrangement or plan was or was not confirmed.)

NONE

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee? (If so, give the name and location of the court, nature of the proceeding, a brief description of the property, and name of receiver or trustee.)

NO

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein? (If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.)

NO

## 10. Loans repaid.

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein? (Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship. If the bankrupt or debtor is a partnership, state whether the lender is or was a partner or a relative of a partner, and, if so, the relationship. If the bankrupt or debtor is a corporation, state whether the lender is or was an officer, director or stockholder, or a relative of an officer, director or stockholder, and, if so, the relationship.)

Mortgage payments to Chittenden Trust Co., Alburg, Vermont and  
American Pioneer Equipment Co., Brooklyn, N.Y.

## 11. Transfer of property.

a. What property have you transferred or disposed of other than in the ordinary course of business, during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

NONE

## 12. Accounts receivable.

a. Have you assigned any of your accounts receivable during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of assignees.)

NO

## 13. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the petition herein? (If so, give particulars, including dates, and the amounts of money or value and general description of property lost.)

Total loss of business July 13, 1973

(If the bankrupt or debtor is a partnership or corporation the following additional questions should be answered.) \$260,000.00

## 14. Withdrawals.

a. What personal withdrawals, including loans, have been made by each member of the partnership, or by each officer, director or managing executive of the corporation, during the year immediately preceding the filing of the original petition herein? (Give name of each person, whether partner, officer, director or manager, the dates and amounts of withdrawals, and nature or purpose thereof.)

NONE

## 15. Members of partnership; officers, directors, managers, and principal stockholders of corporation.

a. What are the names and addresses of each member of the partnership, or the names, titles and addresses of each officer, director and managing executive, and of each stockholder holding 25 per cent. or more of the issued and outstanding stock, of the corporation?

Vincent Falcone - Pres. Leo Laramée - 1 share  
Joseph Falcone - Vice-President Falcone Dairy - 157 shares  
Frank Foley - 1 share ALBURG CREAMERY, INC.

BY: Joseph Falcone  
Vice-President

State of Vermont

County of Chittenden

I, JOSEPH FALCONE, Vice-President, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information, and belief.

Subscribed and sworn to before me this 13  
day of February, 1974.

JOSEPH S. WOOL, Notary Public  
[Official character]

State of Vermont

County of Chittenden

ss.:

JOSEPH FALCONE  
Vice-President ALBURG CREAMERY, INC.

, being duly sworn, deposes and says that he is the

the bankrupt [or debtor] named in the foregoing statement of affairs and is duly authorized to make said statement on its behalf, and that the answers therein contained are true and complete according to the best of his knowledge, information, and belief.

Subscribed and sworn to before me this 13  
day of February, 1974.

JOSEPH S. WOOL, Notary Public  
[Official character]

ALBURG CREAMERY, INC.

BY: Joseph Falcone  
Vice-President



A. Not that I know of.

Q Now during the time you were at Alburg, where did Alburg get its water to make cheese?

A. When we first went to Alburg?

Q Yes, sir.

A. The village water.

Q Village of Alburg?

A. Yes, sir.

Q Did you have any trouble with that water?

A. Yes, sir.

Q Describe for us, if you would, what kind of problems you had with the water.

A. Well, when we first started up there we had a problem with the village water. Of course, this cheese is kept in water for approximately five to six hours every day to cool it, and there were several occasions that we would come in the next morning, I would find that the water discolored and several times I found these little, I guess, polliwogs, or something; a little fish with a long tail.

Q Polliwogs or tadpoles?

A. Whatever you call it.

THE COURT. Little fish with long tails.

A. They were black.

Q (By Mr. O'Neill) They were swimming in among your cheese?

A. No. By that time, you know, they weren't too lively.

Q Was there anything else in the water, any other problems with the water from Alburg other than the fish with the long tails?

A. Well, of course, you know, Alburg did have a problem with their water up there because their water intake was too close to the shore, and a lot of weeds would come through the lines. I know in my home, personally, we had to boil the water to drink it because it was in pretty bad shape. That went on for probably a year or two--I can't recall at the moment,--but Alburg Creamery extended their water intake. I can't recall how many feet, but that finally straightened itself out, because they went out into the lake quite aways for their water intake.

Q You said, Alburg Creamery.

A. I am, Alburg Village, sir.

Q When, approximately, did they extend their pipe out into the lake?

A. Gee, I can't recall, sir.

Q How long after you began up there in 1966, or approximately?

A. It was some time. I just can't recall the date.

Q When you say "some time," some time when?

A. Probably a year, year and a half. I just can't recall. I know I called into their water man or engineer, whoever he is, and that was Mr. Raiche from the Village of Alburg.



Q Now, did you keep using that Alburg water?

A. No, sir.

Q What did you do about it?

A. We drilled a well.

Q When was that?

A. I think it must have been in 1969, sir.

Q Who did you have drill the well?

A. Feeley & Sons from Highgate, I believe it is.

Q Did you have to check with anybody to get the authority to drill this well?

A. I did talk with the Falcone Dairy in New York and told them, and they told me to go ahead and drill it and not lose any time.

Q After you put this well in, where did you get your water after that to make cheese?

A. When we drilled that well, the tank was already built. I had a reservoir of about between twelve and fourteen; I think it was twelve thousand gallons that I kept pumping all night, and I would use that water for the next day. So we were solely under the well water.

Q Did you still use any lake water?

A. Only for washing purposes, sir.

Q Did you use it at all in the making of the cheese?

A. No, sir.

Q What affect did that lake water have on the taste of the

cheese.

A. Well, of course, they had called me and told me they were getting a fishy taste in the cheese.

Q Who is "they"?

A. New York, the Falcone Dairy.

Q How long did these phone calls about fishy cheese last? When were they?

A. Well, that, I can't recall how long it last, but I think it took us about three days to drill that well.

Q Let me phrase it this way. Did you still have problems with fishy cheese after you drilled the well?

A. No, sir, because the Village of Alburg, in the meantime, had extended their water intake several hundred feet, as I understand, and that kind of straightened out the water problem fairly well, but, of course, they would chlorinate the water quite heavily.

Q And, you stopped using the Alburg water to make the cheese when?

A. As soon as my well was built, sir.

Q That would have been 1969?

A. Yes, sir.

Q Now did you have any cheese at any time that was returned up there to your plant at Alburg because there were problems with it?

A. Yes, I did, once or twice, I can't remember. There



was one time, I believe, I got back between five hundred and maybe six hundred boxes. I can't quite remember the amount.

Q How much was in a box?

A. Approximately, between 54 and 55-1/2, sir.

Q Pounds?

A. Pounds; yes, sir.

Q What did you do with that cheese?

A. That cheese was there when I left on June 11th. The cheese was still there.

Q How long had it been there?

A. Gee, I can't recall the dates.

Q Had it been there---

A. Might have been six months, five months. I can't recall, sir.

Q Would it have been like three months, or any longer than seven months? How comfortable are you with seven months, or six months? Is that about right?

A. I would think so, sir.

Q That batch of cheese you just talked about, where did that cheese come back from?

A. I believe that all came back from Brooklyn, sir.

Q From who?

A. Falcone Dairy.

Q What was the matter with it?



A. Of course, I went and inspected it. Some of the cheese was over-ripe and some of it had the flavor which was rather rank, and as far as I can see, it was all over-ripe cheese.

Q Other than that particular shipment, did you have any trouble with any other shipments of cheese from the time you drilled the well until you left?

A. Not that I recall, sir.

Q Did you ever talk with Mr. Falcone, Mr. Joseph Falcone, about the cheese when he was on the phone?

A. About the cheese?

Q Yes, cheese, generally?

A. Yes, sir. He would call me from time-to-time and say, "Well, your cheese is coming a little too ripe, or too green." Too green is not so bad, but too ripe is not so good, either.

Q What does it mean "the cheese was too ripe"?

A. Means the P.H. is too high on it. That cheese will not melt on the pizza. It will burn if it is too ripe because the P.H. is too high.

Q What happens when the cheese is too green?

A. Usually, if the cheese is on the green side, you can build a P.H. on it, but by raising the temperature of the coolers.

Q You ripen it a little bit?

1965?

A. I went up to Alburg. I went to Tunbridge first-- Tunbridge, Vermont--to open up a small plant there which was very small and around in the late fall--in fact, it was winter when I went up to Alburg, and then I started to build the plant there.

Q Did you have some problems with the water at Alburg when you began up there?

A. When I first began?

Q Yes.

A. Yes, I did.

Q Was there what might be described as the poliwoog problem you talked about earlier when you testified?

A. Yes, sir.

Q Did there come a point in time when that ceased to be a problem?

A. Yes, sir, it ceased to be a problem. I can't recall the date which the Village of Alburg extended that water pipe so many hundreds of feet into the lake, and I can't recall the date of that, sir, but the water became better then.

Q Was there a later point thereafter when you drilled a well?

A. Yes, sir, we did.

Q When was that, approximately?

A. I think in 1969.



MR. ANOLIK. I respectfully submit this is not proper redirect examination. We have gone into this well about twenty-five times.

THE COURT. Yes, how do you claim this is proper?

MR. O'NEILL. The next question I propose to ask is about fishy cheese; when the last complaint about fishy cheese came in. We are laying a brief background to the fishy cheese, that is what the next question will be.

THE COURT. On that assurance, we'll take the answer to this question. You may proceed.

Q (By Mr. O'NEILL) Mr. Laramee, did there come a point in time when you were there at Alburg when you stopped getting complaints about fishy cheese?

A. Yes, there was.

Q When was absolutely the last time that you got a complaint about fishy cheese at Alburg?

A. I think that the problem up there was somewhere around mostly, the big problem was around 1967.

Q And then the pipe was put out?

A. Then the pipe was put out. It might have been in that time, sir, around 1967 that they extended the pipe.

Q Okay. Would it be fair to say after you started using the well water, you had no complaints about fishy cheese at all?

A. I had no problem.

Q Now what happened with the well water once it came out of the well?

A. After it came out of the well, it went into a reservoir tank, cement tank, that we built. We had approximately a 12,000-14,000 gallons holding tank.

Q Now, were you ever aware of any problems with the storage tank or the pipes leading into the creamery, or anything of this nature?

A. No, sir. I installed all brand new pipe from the well to all of the vats that we had in the plant.

Q Now, did you test the water periodically?

A. Yes, I had it tested by the University Health Laboratory.

Q Where did you get the water sample from to do the test?

A. The state man instructed me to take all samples from the water through the outlets in the plant.

Q Is that where you took it?

A. Yes, sir.

Q How often did you take these samples?

A. If I recall right now, I think I was required about every five or six weeks anyway. I took several samples there.

Q When did you begin taking those samples?

A. Before we used that water from the well digger man.

Q Mr. Feeley?



A. Mr. Feeley told me to let it run over for twenty-four or twenty-six hours, which I did, before I could use it.

Q Did you start testing the water at that point?

A. It was a short time after, after the first inspection that I had, yes, sir.

Q And, you tested it every six weeks thereafter?

A. Six weeks, yes.

Q Were you ever informed of any problem with the quality of the water after it was tested?

A. No, sir, it was approved.

Q Now, directing your attention to 1971, what type of cheese were you making in that year, principally?

A. I was making mozzarella then and a little feta cheese, not much.

Q Mr. Laramee, are there different types of mozzarella cheese in terms of whole milk, skim milk and this type of thing?

A. Yes, there is a whole milk product and a low moisture, low fat.

Q What type were you making at Alburg?

A. I made up there mostly a whole milk product.

Q Why did you make mostly a whole milk product up there?

A. As far as I can recall, there was two other plants making cheese, and they were making mostly low fat, and they left me making the whole milk, because as I understand it--as I know, it is a little bit more difficult to make

whole milk than low fat.

- Q Did Falcone state to you that you seemed to be the only ones--meaning Alburg--that could make the whole milk mozzarella well?

MR. ANOLIK. Objection, assuming a state of facts not in evidence.

MR. O'NEILL, I don't see what the assumption of the facts not in evidence are.

MR. ANOLIK, Richmond made it also.

THE COURT. No, we'll take the answer.

- Q (By Mr. O'Neill) Do you have the question in mind?

A. No, would you repeat it?

- Q Certainly. Did Mr. Joseph Falcone ever state to you that one of the reasons you made whole milk mozzarella was that you seemed to be the only ones that could make it well?

A. Well, I don't know if he ever said it that way, but he complimented us that we could make whole milk better than some of the other plants.

- Q Now in 1971, specifically focusing on that year, do you have that year in mind?

A. Yes, sir.

- Q Did you receive any complaints, first of all, from any one that your cheese was fishy, rancid, or rotten, at any time?

A. No, sir, I didn't. In 1971, of course, we had the Lucille Dairy with us there. I never received any complaints



from him.

Q How about from Mr. Joseph Falcone, did you have occasion to talk with him from time-to-time?

A. No, because our water was pure then.

MR. ANOLIK. Objection; not responsive to the question.

MR. O'NEILL. I think he misunderstood the question.

THE COURT. Yes, I will strike the answer and the jury disregard it. Listen to the question, Mr. Laramee and answer the questions as asked.

Q (By Mr. O'Neill) Let me rephrase the question, Mr. Laramee. Did you have occasion, in 1971, to talk to Mr. Joseph Falcone on the telephone from time-to-time?

A. Yes, I believe I did. Yes, sir.

Q During any of those times, did he ever tell you that he was receiving rotten, rancid or fishy cheese from Alburg?

A. No, sir, I can't recall that.

Q Did you get any letters from him to that effect?

MR. ANOLIK. Objection; again, he is assuming a state of facts not in evidence, your Honor.

THE COURT. We'll take the answer.

Q (By Mr. O'Neill) Did you get any letters from Mr. Joseph Falcone of any kind saying you had fishy, rancid or rotten chese in 1971?

A. I can't recall of getting any letters concerning that,||  
no, sir.

Q Did Mr. Falcone have occasion to visit you from time-to-time up there in Alburg?

A. Occasionally, yes.

Q Can you recall any specific visit in 1971?

A. I can't recall any in 1971, sir.

Q Can you recall any visit at any time from let's say, 1970 on where Mr. Falcone came to Alburg and told you that you had fishy, rotten or rancid cheese that was being discovered down in New York?

A. No, sir.

Q Did you have occasion from time-to-time, in the course of your business to speak with Mr. Curreri?

A. I spoke to him occasionally; not that many times, no, sir.

Q Did he discuss with you the quality of the cheese?

A. I can't recall any, sir.

Q Do you recall in 1971 if he ever indicated to you that you had rotten, fishy, or rancid cheese?

A. No, sir.

Q Now, in the course of your discussions with Mr. Falcone, were there discussions about the cheese being a little green, or a little overripe, or something like that?

A. Occasionally, we did, yes, sir.



Q Would it be fair to describe those as normal problems with mozzarella cheese? \

A. Yes, it is, sir.

Q Did you ever receive any indication from any one in 1971 that approximately 400,000 pounds of bad cheese had been received in New York , or had become bad after it got to New York?

A. You mean cheese manufactured in 1971, sir?

Q Yes, sir.

A. No, sir.

Q How many days a week were you working up there at Alburg in 1971?

A. I think we were working six days, sir.

Q Why were you working six days?

MR. ANOLIK. I object to the "why" questions, the operation of his mind. Ask him a factual question.

THE COURT. How do you claim it is relevant, Mr. O'Neill?

MR. O'NEILL. We claim it is relevant because we believe we will show they were working six days a week because they couldn't produce enough cheese for New York. They kept wanting more cheese.

THE COURT. We'll take the answer.

Q (By Mr. O'Neill) Why were you working six days a week?

A. Yes, I worked six days a week. We tried to stay on

six days a week, but we also worked seven days a week some times.

Q Why were you working that length as opposed to say a five-day week?

A. The time that we worked seven days a week was to keep up the production and, of course, use up the milk that we had.

Q Did Falcone, down in New York, want as much cheese as you could produce?

A. Yes, sir.

Q Now as a normal situation, how long do you keep cheese in the storage at Alburg before shipping it out?

A. Usually, I kept cheese there --in 1971, of course, we had to make so much cheese for Lucille Dairy and so much cheese for Falcone Dairy, we had to split up the inventory. We shipped as soon as we had a trailer load.

Q Were there occasions, from time-to-time, when you kept some cheese there at Alburg that might be in storage for awhile?

A. I believe we kept some cheese up there, yes, during the flush season. That would be June and July.

Q Mr. Laramee, what is considered within the cheese industry, from your experience, the normal yield on a percentage basis of cheese from one hundred pounds of milk?

MR. ANOLIK. Whole milk.

Q (By Mr. O'Neill) First of all, with respect to whole milk



stored in refrigeration, or stored out in the open? How would you describe your storage facilities?

A. From late 1969 until 1973 while I was there, we had a cooler, a good-sized cooler, and I had contracted out with the, I believe, the Johnsons, or some company in Connecticut some place--I can't remember now--but it was probably a cooler installed the way it should have been. I could freeze in there, if I wanted to.

Q Did you have problems keeping the cheese cooled properly?

A. No, sir.

Q When you took any of that cheese out and shipped it to New York, did you notice any problems with smell? Was any blown up in the bags?

A. No, sir. If it had been, I wouldn't have shipped it out, sir.

Q You heard the various things Mr. Anolik asked you with respect to possible problems. I think there was such things as improper pasteurization of the milk, microbe action in the milk, unclean brine tanks. Did you have any of these problems in Alburg in 1971?

A. No, sir. With what we had to do with, we kept them clean.

Q Now, Mr. Laramee, so we are clear on this, in 1971 did you get any complaints that your cheese was rotten, fishy and rancid, or any one of those?

A. No, sir.

Q Mr. Laramee, when you took your tests of the water, where did you take your tests of the water again, please?

A. I took it from the outlets. You have the main lead that runs into your pipe, and we took it from the outlets where the water would go directly into the vats.

Q Had the water been through the reservoir at that point?

A. Yes, sir.

MR. O'NEILL. That is all we have, your Honor.

RECROSS EXAMINATION

Q (By Mr. Anolik) The tanks and the other equipment were washed down with the town water, weren't they?

A. Yes, sir.

Q Not with the well water?

A. No, sir.

Q Didn't you pack your cheese in Cryouac Bags?

A. Yes, sir, I did.

Q And, they were air tight?

A. Yes, they were.

MR. ANOLIK. No further questions.

REDIRECT EXAMINATION

Q (By Mr. O'Neill) After the Town of Alburg extended the pipe into the lake, did you have a problem with debris and problems with their water after that?

A. No. In fact, the Town of Alburg flushed their tank out,



I think, on two or three different times so it would clear the lines and then after they extended it, within a week or so we noticed the difference in the water because the village had that water tested on a weekly basis, so I understand.

Q When, approximately, was it that the pipe was extended out?

A. Gee, it is pretty hard for me to say a day, sir.

Q Would it have been somewhere, if this is accurate, when you came to Alburg in 1966 and when you drilled the well in 1969?

A. Yes, it was.

MR. O'NEILL. That is all we have, your Honor.

RECROSS EXAMINATION

Q (By Mr. Anolik) But you could not have used town water to make the cheese?

A. I would not use it, no. I did not use town water to make cheese after my well was dug.

MR. ANOLIK. No further questions.

MR. O'NEILL. Nothing further, your Honor.

THE COURT. All right, Mr. Laramee, you may step down.

(Mr. Laramee left the courtroom and Warren Laramee entered the courtroom.)

WARREN LARAMEE, recalled to the stand by the Government in rebuttal.

A. Definitely did.

Q What record did you rely on?

A. I said individual credits given to customers that were given by virtue of cheese received from Alburg, defective cheese, that were in the books of Falcone Dairy which could have reflected at any time as a debit to Alburg.

Q Is there any document in all of these records which says there is \$210,000 worth of credits which Falcone Dairy can assert at any time against Alburg Creamery during the period that the credits were taken, or at any time prior to approximately January 31, 1974?

A. No, there is no document to that effect.

Q Isn't that the---

A. I don't think it is necessary to have such a document.

Q I am not asking for your opinion, but you will agree with me that there is nothing entered in the books of Falcone Dairy for a period from starting in June of 1971 until we get to January of 1974 which, in any way, relates specifically these credits as being chargeable against Alburg Creamery. Now, won't you agree with that?

A. There is---

Q If you don't, I will ask you to produce it.

A. There is no entry to that effect.

Q That is what I want.



A. No, there was no entry to that effect.

Q Anybody looking at the books from June of 1971 until you get to January of 1974 would never know--I am not talking about people in the business--anybody looking at the books would never know that you had \$210,000 worth of credits which you could assert against Alburg Creamery at any time, is that true?

A. That is true.

Q Why did this have to be kept such a great secret?

MR. ANOLIK. Objection, your Honor. I don't see it was a secret.

THE COURT. I will sustain the objection to the form of the question.

Q (By Mr. Cook) Again, going back to the fact you have already agreed, as I understand it, that there was a substantial credit which you say Alburg--you say Falcone had against Alburg, the \$210,000?

A. No question.

Q Did you and Mr. Joseph Falcone discuss what you might do with that credit at some time in the future? Did you talk it over?

A. No, never did.

Q Never mentioned it?

A. Never mentioned it. There was no occasion to.

Q Well now, \$210,000 in red and for 2-1/2 years, you and Mr.

Falcone--when I say 2-1/2 years, the period I am talking about is roughly from 1971 when they started rolling in in 1971 up until January of 1974, you never even discussed the fact that you had \$210,000 on the books coming from Alburg?

A. Mr. Cook, no, we never did, there was no occasion to.

Q Your answer is, you never discussed it?

A. Never discussed it.

Q Never came up in any conversation at all?

A. No, it never did.

Q You want us to believe it was never discussed?

MR. ANOLIK. Your Honor, he is testifying to that effect.

A. If you will let me explain, I will tell you why. It is very simple, and I think the jury should know.

Q (By Mr. Cook) All right.

A. I explained before, Alburg and Falcone, as far as I was concerned, were one and the same, because Alburg was a totally owned subsidiary. What are we going to discuss, the fact we don't have the money? I am going to discuss with him the fact that I didn't have money in my left pocket to put in my right pocket? It seems ludicrous. That is what it amounted to.

Q Did you ever---

A. That is the reason why there was no discussion.



Q Did you ever discuss of putting it on the records of the Falcone Dairy so that the world would know it was there when they looked at the books, that Alburg Creamery owed Falcone Dairy \$210,000 during the six-month period from 1971 due to rancid and rotten cheese? Did you ever discuss that with Mr. Falcone?

MR. ANOLIK. I object. That question embodies the phrase "so the world would know what is on the books". This is a private corporation, not a public corporation, and I object to the question for that reason.

THE COURT. Sustained.

Q (By Mr. Cook) Did you ever discuss with Mr. Joseph Falcone placing such an entry on the books so it would be obvious to any one unconnected with the company that this \$210,000 credit was assertable against Alburg?

A. No, I did not explain it to him.

Q Never talked it over with Mr. Falcone?

A. No, I didn't.

Q Now would it be fair to say when you got your legal opinion from Mr. Wool in the corridor--I guess it was in this building, is that correct?

A. I believe so.

Q That you clearly premised your statement on the fact that you had credit for rotten cheese, is that right?

A. Yes.

Q It was on the basis that the cheese was rotten that you asked Mr. Wool to give his opinion?

A. Definitely.

Q Now, I don't recall if Mr. Anolik asked you anything about drilling a well up in Alburg and any of that testimony. I maybe wrong, but did he ask you anything about that in his direct examination?

A. No, he didn't.

Q Isn't it a fact, when you gave your statement to the F.B.I. and it was testified to here in Court, some time in 1974 you stated that the cause of the rotten cheese from Alburg was due to the water, the lake water that they were using up there, and that they dug a well to eliminate it, and that you said that that was what caused the 1971 rancid and fishy cheese problem? Isn't that what you told?

A. Not in quite that detail; not in quite that detail. I said we were told--after all, I was not up in Alburg, I had to rely on the feedback, third hand or fourth hand information, that the problem may have been caused by fishy water from the lake, or--no, not from the well, from the lake.

Q And, you mentioned the fact a well was dug?

A. I mentioned the fact to my knowledge a well was dug.

Q After that, the problem eliminated?

A. I don't remember if I testified it was eliminated. I



mentioned the fact the well was dug.

Q Wasn't the impression that you left with the F.B.I. that after the well was dug, and you got well water, the problem subsided?

A. I really don't know what impression the F.B.I. got.

Q Did you hear the F.B.I. agent's testimony?

A. He testified to the fact I said the well may have been dug and the condition rectified by digging the well.

Q That was your statement to the F.B.I.?

A. Yes, it was.

Q And, did you tell the grand jury substantially that?

A. Substantially the same.

Q And, you clearly indicated at that time that the problem was not due to shipment of cheese in 1971, but due to shipment of cheese--I am sorry, strike that. You clearly stated in each instance that the defective cheese which you received in 1971 was due to a water problem?

A. Excuse me please; rephrase it.

Q I will strike it; it is not very good. You never told the F.B.I. or the grand jury anything which would indicate that the problem due to bad cheese in 1971 was anything other than a water problem, isn't that true?

A. To my knowledge, yes.

Q Now, it is my understanding that this list of credits of \$210,000 for bad cheese in 1971 was never a separate list

insofar as you were concerned, never maintained as a separate list until after you had the conversation with Attorney Joseph Wool, and you went back to New York and made some photostatic copies of the Accounts Payable book?

A. Sales Journal.

Q Sales Journal?

A. Right.

Q You never had any list prior?

A. There was no list other than photostats from the Sales Journal.

Q Now you testified in regard to questions asked by Mr. Anolik that red ink can mean credit returns, cash discounts, and matters of that sort?

A. I did not say cash discounts.

Q You said there were no cash discounts?

A. There were no discounts given to your customers.

Q No customers?

A. No customers. It is not a policy to give discounts.

Q It can mean many things other than bad cheese on your books?

A. It can mean on our books returns; it has to be return of cheese. We only dealt in cheese, or an allowance, a price allowance; beyond that, I can't think of anything else it could mean.

Q Can you tell me who was "Sonny" in your organization at that time?



A. Sonny was the foreman in the warehouse receiving room.

Q His full name is what?

A. Sonny Barcelona; his first name is Frank.

Q Frank Barcelona, and he is called "Sonny"?

A. Yes.

Q He was the head of the warehouse, is that right?

A. In charge of the warehouse.

Q You were head of the office?

A. Right.

Q Was Sonny responsible to you, nonetheless, even though he was out in the warehouse?

A. No, he was not responsible to me in any way. He had his own function, and I had my function.

Q Well, did you have some direction over him, nonetheless, even though you operated the office and he operated the warehouse?

A. Direction? The only direction I would have over him is with reference to anything that applied to the office; if he brought in something that was wrong, as far as the office is concerned, then I would discuss it with him, or if he had any questions about bills, I would discuss that with him.

Q Now I show you Defendants' "G" which has been identified I believe as a series of invoices which cover, generally, the period of July 1st through December of 1971 of Falcone

Dairy Products. (Handed to the witness) Do you agree that is what they are?

A. Yes, I do.

Q And, it is my recollection that you have testified, but you tell me if I am wrong, that these invoices relate to the \$210,000, do they not?

A. Yes, they do.

Q The total of the red here is in that approximate areas, is it?

A. I believe so.

Q And, I think that you testified on direct examination that if it was good cheese, the cheese would be returned to a certain lot number, is that right?

A. If it was good cheese it would be returned to a certain lot number, yes.

Q And, if it was returned to salt, or returned to Lot X, it could be bad cheese or it could be cheese that was re-processed?

A. Let me clarify that.

Q Answer my question.

A. No. I want to clarify it. Good cheese could be returned to either--could be returned to its lot numbers, if a substantial return. It may be returned to its lot number and be defective cheese, you see, because, in other words, we would identify it from drips and drabs; we throw it into



Lot X and separate them to put in different lots. It is cumbersome.

Q That didn't come out when Mr. Anolik questioned you?

MR. ANOLIK. I didn't go into it, your Honor.

Q (By Mr. Cook) Did Mr. Anolik ask you a question substantially as follows: "Where is good cheese returned to," and you said, "It is returned to a specific lot"?

A. That is right, good cheese is returned to a specific lot number. It isn't necessarily bad cheese so it is returned to a lot number.

Q Bad cheese can be---

A. Right. If we had a hundred cases coming in of a given lot that was bad, we would throw it back into the lot number and we knew the lot was bad and be earmarked as such.

Q You wouldn't put that in Lot X?

A. No. Lot X is a catch lot. In other words, merchandise coming back where you had mixed lots, and it is a matter of expediency as far as the warehouse is concerned. Instead of taking the whole thing, they throw it into Lot X.

Q You would agree with me there is a substantial number of these invoices in Defendants' "G" which are returns to specific lot numbers?

A. May I look at them to see?

Q Let me help you. First of all, there is a top one that is a credit taken in the amount, I think, of \$15,205.89,

and there is no return slip at all attached to that one, is there?

A. Right.

Q There was none, was there?

A. No.

Q So that doesn't say where that cheese was returned to, does it?

A. This is not necessarily a return.

Q It is not necessarily a return?

A. No.

Q To answer my question, that one invoice of 10023 in the amount of \$15,205.89 doesn't say where that cheese was returned?

A. Right.

Q Or even if it was returned?

A. Right.

Q Here is another one, \$45,266.62. There is nothing on that invoice which is 00324 which indicates it was either returned to Lot X or returned for salt, or returned to any other lot, is there?

A. Right.

Q Now here is another one, 00223 invoice in the amount of sixteen hundred forty-eight dollars, and it has got attached to it a slip, and that slip indicates that that cheese was returned to designated lots, doesn't it?



A. Yes.

Q That was no return to salt?

A. No.

Q And, that is Invoice, as I said, 002237

A. Right.

Q Here is another one, 00180 in the amount of fifty-five hundred?

A. Right.

Q Now, that was returned to a specific lot number, was it not?

A. Yes, it was.

Q And, I am not going to go through all these.

A. Want me to explain this?

Q First of all, would you agree with me you have looked through these invoices, have you not?

A. Not really. I know them.

Q You didn't produce them?

A. Yes, we pulled out these invoices against the credits that were on these slips, but I know what is in these invoices well enough not to really have to look through them.

Q Would you agree with me a considerable number of returns are to specific lots?

A. I agree with you.

MR. ANOLIK. Your Honor, I believe the witness

indicated he wanted to give a reason for that and was not permitted to.

MR. COOK. I didn't hear that.

MR. CURRERI. I would like to clarify it.

MR. COOK. Go ahead.

MR. CURRERI. I explained before that we give all this merchandise, since it comes in, a lot number and as you can see, we had a lot of activity in that place. We had to keep control over it. When this merchandise came back here in specific lots, if we had that lot still in our place of business and it was identifiable, we would return the merchandise to that lot and earmark it as bad. If that lot was dissipated, we had no where to return it. We had to give it a new lot number. It didn't make sense, because it wouldn't run in sequence. Then we would return it to Lot X, a catch-all lot, or to salt.

Q It is fair to say on the basis of all you said, when you get rotten cheese returned, it can go to a specific lot number, it can return to salt and it can go to Lot X?

A. That is true.

Q So there is no mistake, you said you know what is in Defendants' "G"?

A. Defendants' "G"?

Q Yes.

A. I have an idea of what is in Defendants' "G".



Q Aren't these documents you spent considerable time over?

A. Mr. Cook, I spent--no, I didn't.

Q You realize that these documents are what adds up to that \$210,000?

A. Right.

Q And, you haven't spent much time on them?

A. No, I didn't.

Q They are your exhibits, you understand?

A. I understand that.

Q Your counsel had them admitted, do you understand that?

A. Yes, right.

Q Can you tell me if there is anything for the record--I would like to describe it as making a couple hundred different invoices, would you agree that is about right?

A. I don't want the exact figures, give or take.

A. Give or take.

Q Give or take a little bit, is there anything on those \$210,000 invoices that indicates to any one not connected with your business that these were for rancid or rotten cheese credits?

A. Mr. Cook, there would not be any necessity at the time. Remember, this took place in 1971. These invoices are for office purposes. People in our office are very conversant and knowledgeable what is going on. They didn't have to spell it out in detail as to what was going on. If we were

mindreaders, or had a crystal ball and anticipated in 1971 what was happening here today, I am sure we would have this thing completely itemized in detail, but we surely could not conceive in 1971 what we are doing today. If we knew it was going to happen today, we would do a lot of things differently today.

Q I would like to know, isn't the answer no rancid cheese, rotten cheese, or bad cheese, anything of that sort, is never mentioned once on any of these invoices? Now, can't you answer that question "Yes" or "No"?

A. No; not spelled out in detail, right.

Q Are the words "rancid or rotten cheese" used anywhere in any one of those invoices? If they are, I wish you would find them.

A. No.

Q Now, is there anything written on any one of these invoices in Defendants' "G" which indicates that these credits are being asserted against Alburg Creamery, Inc.?

A. Definitely not.

Q Definitely not?

A. Definitely not.

Q You have come in here and said they are all chargeable against Alburg Creamery, right?

A. Yes, they are.

Q And, you were getting at that time just as much cheese from



Milton Coop., right? Isn't that right?

A. Yes, it is.

Q No question about that?

A. No question about it.

Q Yet you state---

MR. ANOLIK. Your Honor, he stated before it was a different quality of cheese.

MR. CURRERI. I was going to get into that.

THE COURT. You may examine as part of your interrogation, Mr. Anolik. We'll let counsel proceed.

MR. ANOLIK. The only reason I mention it, he is assuming a state of facts not in evidence.

THE COURT. We'll let him proceed.

Q (By Mr. Cook) So there is no mistake, on any one of these two hundred invoices, nothing is written on them that they are chargeable to Alburg?

A. Right.

Q I show you Defendants' "K" which, I believe, is in evidence. It was introduced, I think, during your testimony. I am not sure if it was yours or Mr. Falcone's, and have you testified that these purport to be bills from Alburg Creamery during 1971 and attached to them, I think you described it, the pink slip as being a runner?

A. Runners, right.

Q Now, these were documents you produced here this morning,

is that right?

A. Yes, sir.

MR. ANOLIK. Those were produced through Mrs. Theoret.

MR. COOK. My error.

Q (By Mr. Cook) They have been testified to this morning on direct examination?

A. Right.

Q Are these all of the shipping invoices from Alburg for the period June, 1971 through December, 1971?

A. These are the invoices.

Q See if you can answer that question. If you don't know, we'll try to straighten it out.

A. These were the invoices we were able to find in the limited time we had Saturday, delving through the tops of warehouses.

Q These, by no means, represent, you know, all the invoices that you received?

A. I don't know. They may be and they may not be. These were what we were able to locate.

Q You know approximately how much cheese you received a week from Alburg during the period, don't you? You have an idea?

A. No, I don't. I do.

Q You don't know whether half the invoices are here from Alburg, a quarter of them, or how many, really?



A. We located the Alburg file for this period of time and these are the invoices in the Alburg file. I assume they are all there.

MR. COOK. May I have just a moment, your Honor?

THE COURT. Surely.

Q (By Mr. Cook; Were you aware during this entire period of time in 1971 that Mr. Falivene never had any trouble with Alburg's cheese at that time?

A. I don't know whether or not he had any trouble with Alburg cheese.

Q You heard him testify yesterday, I think, during the last half of 1971--I don't think it was yesterday, maybe a couple of days ago--that out of all the cheese he got from Alburg in 1971, he took credit totalling eleven hundred fifty dollars in the last half and seven hundred some odd dollars in the first half for a total of approximately nineteen hundred dollars? You heard him testify to that?

A. Yes, I did.

Q Were you ever aware that in 1971 that he had no problems with Alburg cheese?

A. I was not aware they had no problems with Alburg cheese.

Q With regard to fishy, rancid cheese?

A. I am not aware of that.

Q And, it was your understanding that Mr. Falivene was getting

half the cheese from Alburg, more-or-less?

A. Yes, he was.

Q His cheese came from the same water?

A. Yes, it did.

Q To your knowledge?

A. Yes.

Q Same reservoir?

A. Yes, it did.

Q Now, one last area of inquiry, Mr. Curreri. I want to see if I am correctly restating your direct examination testimony, but I understand that you stated that some time in 1971--I don't believe you have mentioned the exact month--but the implication, and I am not saying--I don't mean to use that in any way other than in the best sense--the substance of your testimony on direct examination was that when you ascertained that you had this rotten rancid cheese problem from Alburg, that you were on the phone with Leo Laramee to let him know about it?

A. Yes, I was.

Q And, you said you would phone him several times, is the words you used?

A. Yes, I did.

Q And, as I understand it, this would be several times over a period of maybe June, July, August of 1971?

A. Mr. Cook---



Q Can you answer that?

A. Well, I will try to. In five years, I can't remember in detail how many times I phoned Mr. Leo Laramee just specifically for this purpose. I was in contact with Mr. Leo Laramee as to the problem they were having up there, financially and the yield, but to separate one from the other is virtually impossible.

Q I don't want you to separate each phone conversation, but it was my understanding you were asked specifically about fishy, rotten cheese?

A. On numerous occasions.

Q And that your testimony on direct examination was that you spoke with Leo Laramee on the phone on numerous occasions and told him he would have to do something about that problem. Now, is that an accurate statement, in substance?

A. No, that is not accurate. I did not have the authority to tell Leo he has got to do something. I had nothing to do with Alburg Creamery. They had that responsibility, not I.

Q I think I added something I shouldn't have. You alerted him to the problem of fishy cheese during these several phone conversations?

A. I alerted Leo, I was working for Falcone Dairy Products, that we were having a problem with cheese, and it was a constant problem.

Q And, it was fishy, rotten cheese, right?

A. Right.

Q It was the cheese you took a cheese loss on?

A. Definitely.

Q And, you would say there were several conversations with Leo on the phone?

A. Yes.

Q Did you ever write him a letter?

A. No, I never wrote him a letter.

Q You also testified that Defendant Joseph Falcone telephoned Leo and alerted him to the same problem?

A. Yes, he did.

Q Were you in the office when he called him?

A. Sure was.

Q How many times would you say that Joseph Falcone called Leo Laramee and alerted him to the problem with the fishy cheese?

A. Again, I cannot give you a definite number.

Q All I want is an approximation.

A. Several times.

Q Several would be two, three, four, five, six, seven?

A. Half a dozen times, a dozen times, I don't know.

Q Somewhere in that area?

A. It was a constant thing at one point.

Q A constant thing?



A. Right.

Q I want to ask you, you are very sure of that?

A. I am very sure it was a constant thing, you are asking?

Q Yes.

A. There were many phone calls made.

Q Are you sure of it?

A. Yes, I am sure of it.

Q Did you ever talk with Warren Laramee about this problem?

A. No, I never did.

Q You knew he was the assistant cheesemaker?

A. No, I didn't.

Q You didn't know?

A. No, I didn't.

Q Did you ever talk with Warren Laramee about anything on the phone?

A. I didn't know Warren Laramee. I had never spoken to him.

Q You knew he was up there?

A. I knew Leo had two sons up there; the names, I didn't even know.

Q Your conversations were all with Leo Laramee?

A. Right.

Q I think it has already appeared here in evidence you didn't go up there during that period of time?

A. What period of time?

Q 1971, to Alburg.

A. I was up in Alburg once when they first established Alburg Creamery to set up a production record.

Q Your answer is, that you weren't up there in 1971?

A. No.

Q Do you know whether Mr. Falcone went up there in 1971 to try to straighten out the fishy cheese problem? Can you remember that?

A. I don't remember whether it was in 1971. I know Mr. Falcone made several trips to Alburg.

Q This was the real bad period wasn't it? No question about that?

A. Yes.

Q Do you know, or can you remember whether or not he went up there any time between June and December of 1971?

A. He certainly did.

Q He certainly did?

A. Yes.

Q You are certain he went up there for the purpose of eliminating the fishy cheese problem?

A. To inquire into the fishy cheese problem.

Q And, everything you said here is under oath and true, as best you know?

MR. ANOLIK. I object to that. Of course, he is under oath. That is an improper and intimidating



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

Docket No. 76-1237  
Appellee

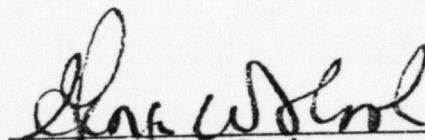
v.

JOSEPH FALCONE and  
JOSEPH CURRERI

Appellants

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of  
September, 1976, mailed a copy of the attached Brief  
and Appendix to Irving Anolik, Esq., counsel for  
Appellants, postage prepaid, 225 Broadway, New York,  
New York 10007.

  
George W.F. Cook  
United States Attorney

Enclosures (2 each)